RASMUSSEN DRILLING, INC.

IBLA 78-64 Decided April 3, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting a petition for deferment of annual assessment work on 36 lode mining claims. W-36614.

Appeal dismissed.

1. Rules of Practice: Appeals: Dismissal

An appeal from a decision respecting a petition for deferment of assessment work on lode mining claims is properly dismissed where it appears that appellant has no interest in the claims.

APPEARANCES: Lowell Rasmussen, President, Rasmussen Drilling, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Rasmussen Drilling appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting its petition for deferment of annual assessment work on the Joy #1 through #36 uranium lode mining claims located in sec. 17, T. 35 N., R. 74 W., sixth principal meridian, Wyoming. According to the decision below, appellant requested and received deferments for the annual assessment work on the 36 claims for the years commencing September 1, 1971, September 1, 1972, September 1, 1973, September 1, 1974, and September 1, 1975. Appellant argues that it performed all requisite assessment work on the claims during the years 1969-72, and states that deferment was granted for the years 1973, 1974, and 1975 due to an obstruction of the access to the claims. These circumstances, appellant argues warrant the granting of its present petition for deferment of assessment work.

[1] It appears from the record before us that the Joy Nos. 1 through 36 claims have been the subject of protracted litigation between appellant and the Kerr McGee Nuclear Corporation and the Kerr McGee Corporation. It further appears that a recent decision by the

United States Court of Appeals for the Tenth Circuit 1/ established that Rasmussen Drilling has no legitimate interest whatever in the subject claims. The United States Supreme Court having subsequently denied appellant's petition for certiorari, 2/ no issue remains to be decided by this Board, the case should be dismissed. Duncan Miller, 28 IBLA 62 (1976), cf. Caroline L. Hunt, 26 IBLA 218 (1976).

Even if the appeal were not dismissed, appellant could not be granted relief. The pertinent statute, 30 U.S.C. § 28 (1976), provides in part:

> The period for which said deferment may be granted shall end when the conditions justifying deferment have been removed: Provided, That the initial period shall not exceed one year but may be renewed for a further period of one year if justifiable conditions exist: * * *. [Emphasis added.]

Appellant having already been granted three deferments, there would be no basis for granting the application in any event. Charleston Stone Products, 32 IBLA 22, 24 (1977).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

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Joseph W. Goss
Administrative Judge

We concur:

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James L. Burski
Administrative Judge

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Edward W. Stuebing
Administrative Judge

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1/ Civil No. 76-1729 (Nov. 18, 1977)
2/ Cert. denied by United States Supreme Court, order list for October 2, 1976.